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Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,

Petitioner,

against

EVALD JOHANN LARSEN,

Plaintiff-Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR THE PLAINTIFF-RESPONDENT

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BRIEF FOR THE PLAINTIFF-RESPONDENT

The Questions Presented

(1) Are foreign owners and operators subject to the liability of the provisions of the Jones Act (Section 33 of the Act of June 5, 1920, c. 250, 41 Stat. 988, 1007, Title 46, U. S. C. A., Sec. 66) in those instances wherein they sign on, in a port of the United States, foreign seamen to serve aboard vessels of foreign registry, and such seamen are injured on the high seas or in a foreign port?

(2) Are foreign owners and operators who regularly engage in the carriage of American commerce, and employ vessels of foreign registry for that purpose, subject to the liability of the aforesaid Act in those instances wherein they sign on, in an American port, foreign seamen for service aboard such vessels, when such seamen are injured on the high seas or in a foreign port?

And in a broader measure:

(3) Are foreign owners and operators who regularly employ vessels, registered under foreign flags, in the carriage of American commerce from and to and to and from ports of the United States, subject to the provisions of this Act, and can any foreign seamen serving aboard such vessels, receive the benefits under this Act, in the Courts of the United States, regardless of the place of signing on or the place of their injury while in the service of the vessel?

(4) Shall the jurisdiction and the appropriate laws of a nation govern and be applied to foreign owners and operators, of one or more vessels of foreign registry, who are regularly engaged in the carriage of the ocean-borne commerce of that nation, in those instances where claims are made by aliens or citizens, arising out of occurrences on the high seas or other foreign ports, while the vessel or vessels are engaged in the carriage of that nation's commerce?

(5) Shall such claimants have the election, to select the forum of the vessel's flag, subject to the laws of its flag, or to select the forum and the obligations imposed by the laws of any nation in whose commerce the vessel was engaged when the claim arose?

The Statute Involved

Section 33 of the Act of June 5, 1920, C. 250, 41 Stat. 988, 1007, Title 46, United States Code, § 688, known as the Jones Act, reads as follows:

"SEC. 33. That section 20 of such Act of March 4, 1915, be, and is, amended to read as follows:

'SEC. 20. That any seaman who shall suffer personal injury in the course of his employment may, at his

election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.'"

Statement of Facts

In considering the larger issue herein, we cannot confine ourselves to the necessarily limited area of proof required in the Trial Court below under the prevailing rule of law in the second circuit. The record, however, does indicate that plaintiff-respondent signed on a vessel regularly engaged in the American Shipping Trade.

It is also a matter of public record that this petitioner has been directly engaged in such trade, for many years, operating out of our ports.

Likewise, it is a matter of common knowledge that flagrant abuses of our hospitality are being practiced by other allegedly foreign ship owners who conduct their business in the United States in the names of foreign corporations, flying the flags of still other foreign lands, as a device to evade the obligations of our laws.

The record below discloses the following facts:

Both parties are Danish citizens.

Respondent, a seaman, signed Articles in New York on July 25, 1946, to serve aboard the SS Randa, a Danish flag vessel, for a voyage from and to New York (fols. 75, 138). The Articles merely stated "a voyage to South America and other places".

Petitioner admitted that the Articles called for an indefinite service (fols. 139, 145). They also provided for discharge on seven (7) days' notice at any port, and petitioner now claims that their terms called for a limitation of the owner's liability. Thus they contravened the laws of the forum where made, rendering them void and subject to a liberal interpretation in favor of the seaman.

The vessel did return to New York and respondent had a right to expect such return (Pre-Trial Order and admission, fols. 46 and 145).

Defendant's Exhibit A (p. 45), the Articles, show that the last two seamen listed thereon, who signed on with respondent in New York, signed off in New York on October 14, 1946, only six days after respondent's injury in Havana. Thus petitioner's own exhibit nullifies his claim and establishes a voyage from and to New York.

The same exhibit shows that although the vessel flew the Danish flag, *not one seaman* listed signed on or off in Denmark.

The Articles provided for wages at a scale fixed between Danish operators and Unions.

While on the return voyage, petitioner was injured aboard the vessel at Havana, Cuba, on October 7, 1946, while in its service, due to fault attributable to petitioner.

He was hospitalized in Havana, Cuba.

He was returned to the United States aboard another vessel owned by petitioner (fol. 47).

He was again hospitalized at the U. S. Marine Hospital, Ellis Island, N. Y. (fol. 47).

He was paid one week's wages, the equivalent of wages to the end of the voyage, and he received medical care. The proof established and the jury found that he did not receive full maintenance nor any compensation for his injury. Thus there is no basis for petitioner's claim that respondent elected to receive or did receive any benefits under the Danish law.

Service of the summons and complaint herein was effected upon petitioner by serving J. Lauritzen Agency, Inc., a

domestic corporation, at 67 Broad Street, N. Y. C. An affidavit of this service is on file with the papers herein in the U. S. District Court for the Southern District of N. Y.

Attorneys for petitioner appeared herein on May 20, 1947 (fols. 19-21), and interposed an answer (fols. 22-27). Such answer did not raise any defense to the applicability of the Jones Act and at no time was the validity, propriety or jurisdiction of the service questioned.

By stipulation dated May 7, 1951, and order entered May 11, 1951 (p. 10), four years later, the amended answer was filed and served.

The Trial Court ruled, and the jury found, that there was no valid agreement to be bound by Danish law.

The question of negligence was proven and submitted to the jury. The jury verdict was in favor of respondent in the sums of $4,052.50 for damages and $215 for maintenance.

On appeal to the United States Court of Appeals for the Second Circuit, the judgment was sustained on the authority of *Kyriakos* v. *Goulandris*, 2 Cir., 151 F. 2d 132, and *Taylor* v. *Atlantic Maritime Co.*, 2 Cir., 179 F. 2d 597, cert. den. 341 U. S. 915.

That the petitioner has been engaged, for many years, in operating a regular business in the transportation of the exports and imports of the United States from and to its ports, is buttressed by the record in "The Paula", 91 F. 2d 1001; "The Grace Lines-West Coast Line, Inc., Pooling Agreement, 1940 A. M. C. 1515; and the open and avowed advertising, over many years, of the regularly scheduled sailings of petitioner's vessels, from and to American ports.

It is a matter of common knowledge, of which this Court can take judicial notice, that the activities of petitioner are duplicated many fold by other foreign operators. The situation is further aggravated in that the supposedly benign influence of the "flag's" protection has brought into the competitive orbit of our commerce, American and alien

residents who organize corporations in foreign lands to own vessels which, in turn are registered in, and carry the flags of, still other foreign nations, none of which have any national interest in the commerce of these vessels, which operate exclusively within our stream of commerce.

For the factual elements of the conditions referred to above, we respectfully refer this Court to the amici curiae brief for *Peter D. Pedersen, et al.*, and the argument herein.

Also worthy of comment on this point, and to be elaborated more fully in the following argument, is the fact that respondent had originally commenced suit against West Coast Line, Inc., as well as petitioner but the proceedings against this corporation were not continued on the assumption, implicit in the original Answer herein, that the sole issue in the action was one of negligence. For four years, respondent was lulled into the belief that ownership, operation and control and jurisdiction were not at issue. Only with the approach of the trial, did petitioner introduce the issue now before this Court.

Summary of Argument

Foreign seamen signing on foreign vessels in the ports of the United States have the right, under the terms and context of the Jones Act, to institute actions, in the appropriate Courts of the United States, against foreign owners, for damages arising out of injuries received in the course of such service.

Although affirmance of the judgment below is amply justified by the inclusion of alien seamen and owners within the broad scope of this Act, under the circumstances herein, there are more pressing reasons for its applicability and additional bases for the jurisdiction of our courts thereunder.

Assuming, but by no means conceding, that the Jones Act did not include alien seamen as beneficiaries, nevertheless, it is right and proper that the provisions of such Act be

applied for their benefit, under the appropriate conditions present in this case.

First, it is axiomatic that the Courts of the United States have the fundamental power and jurisdictional authority to apply the laws of the United States to aliens who submit to the jurisdiction of this Country by their conduct of a regular course of business in the stream of commerce within its orbit.

Secondly, under the doctrine indicated by JUDGE LEARNED HAND, in his dissenting opinion in *Kyriakos v. Goulandris*, supra, that wherever and whenever it appears that the pressing domestic policy and the overriding national interests of this Country so dictate, the Courts of the United States have the absolute right and duty to assume jurisdiction over, and to apply the laws of the United States to, aliens who affect such policy and interest.

It is clear from a reading of the Kyriakos dissent that it was occasioned by the failure to pose the questions and to supply the supporting facts, which in JUDGE HAND'S opinion, would justify the decision so rightly made.

This suit involves more than a legal contest between two aliens, one seeking the maximum, the other the minimum, assessment of damages.

The petitioner herein is representative of the interests and aims of all foreign owners and many of their governments.

Strangely enough, the stake of the American Merchant Marine, its seamen and the welfare of this Government is greater than that of the respondent and the class he represents, which is by no means small.

The Jones Act comes within the scope of our admiralty principles and laws.

"The fiction of the territoriality of merchant vessels is not established in international law" (*Philip C. Jessup*) and its concomitant rule of the "law of the flag" is not controlling upon any sovereign state.

Due to the legal void on the high seas, such rule had, and may still have some practical justification under limited and appropriate conditions.

When merchantmen were traders, bartering the commerce of the land to which they owed allegiance, and in whose commerce the sovereign had a pecuniary interest as well as that of the general welfare, it might be said that the owning nation had an interest in such vessels superior to that of any other nation.

But the character of vessels has changed from trading to transportation service.

Now the nation whose goods are being carried, replaces the owning nation in having a prime interest in the vessels' activities. By analogy with the "law of the flag", the applicable law now should stem from the nation that is being served. This is especially true when its merchant marine must meet this foreign competition in its own ports.

Thus, the Courts of that nation, whose goods are being carried by foreign vessels, upon acquiring jurisdiction over the foreign owner, have both the right and duty to apply the laws of such nation to such foreign vessels, no matter where the claim arose, for the purpose of establishing parity and equality of law for all who do business within its orbit.

In the absence of universal standards and laws, applicable to and enforcible upon all nations equally, no one nation has the right to impose its laws and standards upon another.

Such conflicts are not resolved by having one nation yield its sovereignty to another.

Each has the right to apply its law in its own jurisdiction.

A claimant may select whatever forum he desires and receive the benefits resulting from such choice.

A ship owner is liable under the laws of the forum where he does business as well as in his own country.

Neither right nor reason accords ship owners the privilege to limit their liability to the laws of the flag they select, and to impose such limitation when operating outside the scope and domain of such flag's law.

Thus, the essential element to be determined on this application, is not limited to the extent of the coverage of the Jones Act.

Of greater significance is the issue as to whether the Courts of the United States have the right and power to protect the overriding interests of this nation and preserve its pressing public policy, by preventing the establishment of an exempt and preferred class of aliens doing business here in competition with our Merchant Marine within the stream of our commerce, and by imposing the terms of our law equally to all engaged in our commerce, citizens and aliens alike.

POINT I

Public policy based on the economic and defense requirements of this nation require that our laws be applied equally to all who conduct a regular business in our stream of commerce, aliens and citizens alike.

At the outset we wish to make perfectly clear that in order to resolve the issue raised by petitioner, we must go beyond the bare facts of the record.

At the trial below, the prevailing rule, then and now, in the Second Circuit was stated in *Taylor* v. *Atlantic Maritime Co.*, supra, to be, that the signing on of a foreign seaman on a foreign vessel, in an American port, subjected the owner to liability under the Jones Act.

In view of this circumstance, there was no issue, and no proof was adduced, as to many matters in the public records, court reports, and those facts which are of common knowledge and of which this Court may take judicial notice.

Since the issue herein is of such importance, it would be manifestly unjust to be confined to the limited facts in the record, without considering the widespread conditions which gave rise to it and upon which a determination must, of necessity, be made.

Thus, the problem is not whether Larsen, and others similarly situated, can recover under the Jones Act merely because he signed on a foreign vessel in New York. Nor is

the question of a voyage beginning and ending in New York, sufficient to dispose of the actual problem involved.

We are confronted with basic legal concepts; equality under our laws; the rights of aliens doing business within our orbit; the nature and jurisdiction of our maritime law; and the effect of public policy and national interests thereon.

Under those circumstances, the issue as to whether or not the Jones Act, standing alone is sufficiently broad in its coverage, becomes incidental to the larger questions, and justifies a more thorough examination of all the factors involved.

Despite petitioner's bland assumption, we are not dealing with an "all foreign" problem remotely affecting the economic welfare and public policy of this country.

Both the facts in this case and the generally prevailing conditions of our shipping industry indicate that foreign owners and foreign flag vessels have usurped a dominant position in the American stream of commerce, to the detriment of our merchant marine and its seamen.

The petitioner, in the instant voyage, for many years prior thereto, and at all times thereafter, consistently operated in American sea-borne traffic. His were not vessels operating out of Danish ports and in Danish commerce. He was doing business in this country. He therefore should be subject to its laws.

A recapitulation of the facts is in order.

Plaintiff-appellant was hired in the United States for a voyage from and to the United States. He was part of a pool of foreign seamen maintained in this country to man Scandinavian vessels and to perpetuate the "Foreign Flag" myth. Notwithstanding petitioner's quibbling as to the indefiniteness of the Articles, there is little doubt that this seaman was advised that he was hired for a voyage from and to New York, and petitioner's counsel admitted that he had a right to expect such a return voyage. The record establishes its accomplishment.

Further, a fair inference to be drawn from such an admission is the fact that such vessel was regularly engaged

in voyages from and to this port. There is ample confirmation for this conclusion.

Defendant's Exhibit "A" (p. 45) definitely establishes the return of the S.S. Randa to New York, six days after respondent was left in the Cuban hospital, as indicated by the signing off of the last two listed seamen, who had signed on with Larsen in New York.

That the petitioner has been operating in our trade for many years is buttressed by the fact that he is the same owner involved in "The Paula" (supra). Thus, long before 1937, his vessels plied between the United States and Chile. Unfortunately, this fact was never forcefully established, or even presented to the Court at that time. The "in rem" proceedings lent color to completely foreign activities. The "law of the flag" was applied in view of the non-disclosure of the true facts.

The amici curiae brief on behalf of Petter D. Pedersen, et al. (pp. 13, 14, 17, 18, 19 and 20 thereof), traces the activities of this petitioner's vessels in the United States.

Prior to 1937, such vessels, registered in Denmark, but engaged in shipping from and to the United States, were operated through Wessel-Duval & Co. Inc. Thereafter, West Coast Line, Inc., took over, and it continues to conduct the operation of these Danish flag vessels in the American trade.

The 1940 A. M. C. 1515, reports a Maritime Commission hearing on a Grace Line-West Coast Line pooling agreement, which specifically finds that the West Coast Line, Inc., Wessel-Duval & Co. Inc., and J. Lauritzen were engaged in a joint operation in the United States to South American trade, with all vessels, of Danish registry, being supplied by petitioner.

"Regular direct service" of these Danish flag vessels, from American to South American ports, has been and is still being advertised in our periodicals.

It is significant that neither Wessel-Duval & Co. Inc., nor West Coast Line, Inc., own any vessels. But they do have a Maintenance Department at 90 Broad Street, New York City. J. Lauritzen, Inc. has its office there. The telephone

numbers are the same. Obviously, petitioner's vessels are serviced and maintained here. All operations are conducted from this country. Only the profits flow to Denmark.

The petitioner did not question the service herein upon its domestic corporate instrumentality and appeared, conceding the jurisdiction of this Court.

At this point, it would be very pertinent to point out that the "confusion" of which petitioner complains is created by his own acts, which tend to conceal his true operations and activities with the obvious intent of creating an impression of completely foreign operation and dominion.

This results in a denial of right and justice.

For example:

The plaintiff-respondent originally commenced this action in the Supreme Court of the State of New York against J. Lauritzen and the West Coast Line, Inc. They both appeared and answered by petitioner's counsel. In conferences, it was indicated, as pleaded in the Answers, that Lauritzen would not deny ownership and control and that West Coast merely considered itself as a husbanding agent.

Since such admission by petitioner eliminated the necessity for proof of ownership and control and since Lauritzen was financially responsible, it was agreed that the action against West Coast would be discontinued and the instant action would be instituted against Lauritzen alone. The only issue, on the pleadings, was that of negligence.

For four years plaintiff-respondent was lulled into a feeling of security on that score.

Then four years later petitioner reversed his position, amended his Answer, and for the first time raised the question of the foreign flag.

Mildly put, such actions by petitioner, calculated or not, constituted an unfair and highly prejudicial course of conduct that should not be condoned.

It was made possible only by reason of the devious course of business conduct pursued by this petitioner and his affiliated American companies.

Unquestionably, this petitioner has been occupying an important position in our commerce. It seriously affects our trade, witness the pooling arrangement with the Grace Line, a subsidized American carrier with whom it competes.

This activity has no direct relationship to the Danish trade, except in siphoning off profits earned in our trade.

Here we have more than merely the jurisdiction acquired by coming into our ports. Lauritzen's vessels are no casual visitors. They have been regularly in our ports for many years. They are serviced here by the Maintenance Department of West Coast Lines, which owns no vessels requiring maintenance. Lauritzen organized companies bearing his name, which have common offices with West Coast Lines. Such operations and activities over the years vitiate the flimsy veil of the foreign flag and demonstrate that Lauritzen has been and is now doing business here. His activities are American from inception to conception.

It is interesting to note that petitioner indirectly, and probably subconsciously, conceded the truth of the above statements and inferentially conceded liability.

On page "65" of his brief he refers to the *Taylor* case and points out that the defendant in that case had been a recent listee as a Panamanian owner of ten ships, previously owned by our Government, and that it was indicated

> "that the true situs of the control and operation of this vessel flying the Panamanian Flag was in the United States".

It is noteworthy that he did not add the word "ownership" to the American situs.

Thus we can assume that he seeks to distinguish the *Taylor* case from this one in that "the true situs of operation and control was in the United States", while in the subject case it was not.

Yet it is significant that in stating his status he carefully uses the ancient form of a "negative pregnant" (p. 63, Pet. Brief):

> "There is nothing in the record and in the final judgment in this case to indicate that the S.S. *Randa* was

not a legitimate Danish vessel flying the Danish flag, registered in Denmark and owned and operated by the Danish petitioner" (Pre-Trial Order, 16).

This statement is not an averment of its truth.

It does not even declare that the vessel was operated and controlled from Denmark.

It merely declares what petitioner claims the state of record to be, and not whether it is true or false.

It must be kept in mind that when the Pre-Trial Conference and the Trial occurred, the law stated in *Kyriakis* v. *Koulandris* and *Taylor* v. *Atlantic Maritime Co.*, supra, prevailed in the Second Circuit of this Court. Such rule gave plaintiff a right of action against a foreign shipowner who signed on any seaman in an American port. Hence, the place of operation and control of this vessel, or its true ownership, was not an essential issue.

Reliance upon a record on a point not at issue and on which no testimony was adduced or required as a matter of prevailing law, is indeed a slender reed for the support of a statement which is contradicted by public records and published statements.

The least we can expect of Lauritzen is to require him to conform to our laws and be on legal parity with our merchant marine while competing for American commerce.

Let it be clearly understood that this is not an argument restricting the freedom of competition or hindering international trade. Nor is it discriminatory. We seek parity.

Certainly we have a right to expect the courts of this country to apply its laws to all who do business here.

Petitioner's activities are not isolated instances in our commerce. There are many other foreign shipping lines likewise engaged in these practices. And there are also aliens devoid of all national loyalties, resident here, who form corporate enterprises in countries other than their own; such enterprises own and ostensibly operate vessels in our trade registered under the flags of still other foreign nations. Through the conniving of such foreign corporations and registries, they demand immunity from our laws whilst operating in our midst.

A bulletin of the Department of Commerce on "Foreign Trade-Water Borne", dated October, 1952, lists the imports and exports carried from and to the United States for the past six years:

TABLE A.—PERCENT OF CARGO TONNAGE CARRIED ON UNITED STATES FLAG VESSELS IN THE UNITED STATES EXPORT AND IMPORT TRADE: 1946-51

	Percent carried on United States flag vessels				
	Total	*Dry cargo*		*Tanker*	
Year	*trade*	*Exports*	*Imports*	*Exports*	*Imports*
1951	40	38	36	25	50
1950	39	31	32	43	55
1949	45	36	36	37	71
1948	48	40	47	32	76
1947	54	51	54	36	75
1946	60	61	56	40	76

Source: Bureau of the Census, Foreign Trade Division, Summary Reports, FT 973, United States Foreign Water-Borne Trade by Trade Area.

These figures show that the respective positions of foreign and American shipowners have been reversed. In 1946, we carried 60% in our bottoms, 40% in those of foreign flag vessels. In 1951, as we carried only 40%, while foreign vessels carried 60%.

There has been a steady deterioration of the position of the American Merchant Marine and the seamen dependent upon it.

The situation would have been much worse had it not been for the 50% of the Mutual Security Cargos required to be shipped in American bottoms.

There is no need to elaborate on the public policy of our Government, since 1915, in its attempt to build up our merchant marine, both for economic necessity and as an adjunct to our navy for defense purposes.

These attempts are being thwarted not merely by the lower operating costs of foreign lines, but by their ability to do business here in the United States, without being subjected to our laws. This places an insurmountable handicap in the way of our operators.

This Court has taken cognizance of this problem in *Warren v. U. S.*, 340 U. S. 523, 71 S. Ct. 432 (1951), where, in discussing "The Shipowner's Liability Convention" and its relation to American efforts to raise foreign standards in an attempt to equalize operating costs, MR. JUSTICE DOUGLAS on page 527 said:

> "We find no suggestion that it was designed to adopt a more strict standard of liability than that which our maritime law provides. The aim indeed was not to change materially American standards but to *equalize operating costs by raising the standards of member nations to the American level.*" (Emphasis ours.)

The difficulties are largely occasioned by the very many foreign flag vessels which operate out of our ports, and rarely have any commerce with the country of their registry. Many nations have vessels registered under their flag, far in excess of their national requirements.

The records of the New York Customs House, of vessels entering and leaving the Port of New York, from July 1, 1951 to June 30, 1952, support this conclusion. Just a few of such countries are listed below:

Country	*No. of Vessels Enter*	*No. of Vessels Clear*
Denmark	297	295
Honduras	112	110
Liberia	146	149
Norway	1059	1063
Panama	364	364
	1978	1981

See appendix "A" for complete Report.

Since only 3,525 American vessels entered and 3,420 left New York Port, many of which were coastwise vessels, we can readily see that these vessels registered in the five nations listed above, having a comparatively negligible foreign commerce of their own, have carried a very substantial portion of American exports and imports, from and to ports other than the nation of their registry.

We might add that many other nations not listed above also have their vessels engaged in American commerce, divorced from trade with the country of their flag.

Furthermore, it is notorious that many shipowners owe no loyalty to the flag they fly. As set forth in the amici curiae brief for Petter D. Pedersen, Greek nationals, living in and operating from the United States, control substantial numbers of vessels owned by Panamanian corporations formed by them, flying Panamanian, Honduran and Liberian flags.

To facilitate the American business of their flag vessels, the Danish, Norwegian and Swedish Unions maintain a hiring hall at 156 Montague Street, Brooklyn, New York. In the amicus curiae brief of the Norwegian Government, on the petition for certiorari, served upon counsel but withdrawn before filing, there was a statement that 7,000 Norwegian seamen signed on vessels in New York, in the course of a year. Actually, we have been advised that the number is substantially greater.

These Unions are closely allied with their Governments. Please note that on page "5" of the amicus curiae brief of the Danish Government, filed herein, the opinions of the Union, as well as the shipowners, were secured before such brief was filed. There is no question but that such Unions are closely allied, if not completely subsidized and dominated by their Governments. Nevertheless, they act as an employment agency here in the United States for the vessels operating out of our ports, vessels which claim immunity as being foreign and remote from our commerce.

These Unions, their Governments and owners maintain medical centers and quarters for their nationals in this country.

Without such facilities, they could not maintain a pool of foreign seamen to operate these "foreign" vessels in our trade, perpetuating a fiction that should have been eliminated long since. Any seaman part of this labor pool in the United States is entitled to the protection of its laws.

It is also noteworthy that they use American facilities as well. Larsen was treated in American hospitals. This is a general practice when their clinic facilities here are found to be inadequate. We should not ignore the fact that such medical and hospital costs are borne in a measure by American taxpayers, since charges for such services are invariably below their cost.

Many of these foreign operators have established agencies to conduct their business here, some of them bearing the name of the parent company. J. Lauritzen—J. Lauritzen, Inc.; Fernley & Eger—Fernley & Eger, Inc.; Oivind Lorentzen—Oivind Lorentzen, Inc.; Wilhelmsen—Barber Steamship Co., formerly and commonly known as Wilhelmsen-Barber Line. An inquiry to such agents quickly elicits the same refrain—"we do not operate—we are only husbanding agents—everything is controlled from abroad".

This is a myth. There is no reason why such patent subterfuges should receive judicial blessings.

Foreign citizens are not the only one profiting from the confusion created by divorcing ownership, operation and flag registry. The present state of the law affords Americans, as well, the necessary subterfuge to secure the anonymity of the foreign flag.

For example, Nicholas Karaganis, a Greek seaman in this country since the early 1940s, shipping in our merchant marine, and who had made arrangements to apply for citizenship, died as a result of the negligence on the part of a domestic corporation, owning and operating a vessel, registered in, and flying the flag of, Liberia.

Strangely enough, Karaganis' old mother was appointed guardian of his two infant children and a "suit" was instituted in the Court of Peace at Athens, Greece, to recover the nominal amounts payable under a Greek compensation statute. Within two months this "suit" was settled.

It is a cause for wonder how a Greek Court could so readily secure jurisdiction and apply its laws so quickly against an American corporation and a "Liberian" vessel, in connection with an injury that occurred elsewhere.

Suit was thereafter commenced in this country under the the Jones Act.

The defense was not merely the release, but that the Jones Act does not apply to a "Liberian" vessel and that under the rule of the "Law of the Flag" only Liberian law was applicable. Evidently these owners were and are ready to invoke any law relieving them of liability.

Or we have the case of Aage R. Mortensen, a Danish citizen who, with his family is a resident of America, was injured aboard a Honduran vessel, owned by a Honduran corporation, which we have every reason to believe is owned, controlled and dominated by an American shipping company.

Mortensen lost his eye. As soon as he returned to the United States after the accident, the American company, without permitting or suggesting the benefit of the advice of an attorney selected by this seaman, advised him that he was only entitled to compensation under Honduran law. But to help him out, the American company would get for him a relatively nominal sum for his injury and save him litigation in Honduras.

A lawyer, to represent him, was hired in Florida by the company; the seaman was flown from New York; suit was instituted; a trial was started; a settlement effected and judgment entered; *all within one day.* A motion to dismiss a subsequent complaint on the grounds of res judicata was denied on the allegation of fraud.

The obvious heartlessness and cruelty of these acts are made possible only because of the ability of shipping com-

panies to hide behind the fiction of the territoriality of a vessel.

Thus, in addition to the unfair competition, the rule in question makes it possible for fraud and deception.

It is a sword directed against the United States and seamen, whether wielded by actual foreign owners flying the flag of their country, or those who use the flag of another nation as a subterfuge.

A rule of law which is so harmful to the national host, and to seamen, merits no consideration. And, as will be demonstrated, it bears no international recognition.

Petitioner rightly states that trade and comity is a "two-way street", implying retaliation.

Let us look at the record. How well do American vessels fare at the hands of foreign Governments?

In the Report of the Hearings before the Sub-Committee on "Merchant Marine and Maritime matters, of the United States Senate, 82nd Congress, 2d Session, on Discriminatory Acts of Foreign Governments, affecting our Merchant Marine, April 4, 1952", with Senator Magnussen presiding, printed by the Government Printing Office, on pages 71, 72, 73, the testimony established that the Governments of Greece, Spain, France and Holland have influenced shippers not to use American flag vessels which could give equal, if not preferred, service. The discrimination on the part of South American countries was even more openly flagrant, even if not so successful in effect.

On page "74" of this Report of the Hearing, the testimony established that American vessels had participated only in E.C.A. cargoes to Scandinavian countries, 50% of which by law, had to go in American bottoms. However, since E.C.A. diminished

> " * * we have not been able to secure cargo to these countries due to the fact that practically every pound of cargo, either Government or commercial, is instructed to their national flag vessels.
>
> This is a discrimination in itself but it is found to be doubly so when one considers the liberal participa-

tion of their merchant marine in the handling of exports and imports between our country and countries throughout the world outside of Scandinavia."

Yes, trade may be a two-way street, but in the Scandinavian countries it goes only one way.

Under these circumstances, there is very little left in line of additional discrimination to be levelled against us. They have already shot their bolt.

But our plea bears no trace of discrimination.

We seek parity and equality.

Certainly we have a right to expect in matters of law, that our statutes be applied equally and impartially to all who garner their benefits here. None should be permitted to evade their obligations.

That we are not concerned here with merely casual and isolated visits to our shores, by foreign vessels, is attested to by the fact that four foreign Governments saw fit to file briefs amici curiae on the petition for certiorari. Evidently, they too recognize the large number of foreign vessels engaged in our trade and seamen resident in the United States to service them.

Both the Danish and British amici briefs, on the application for certiorari, did not hide the motives for their anxiety. They were interested in securing more of our dollars through cost advantages in by-passing our laws. That undoubtedly was true of the other Governments as well.

We may sympathize with them and believe that our Congress should give greater aid than it is now furnishing, but that is no reason for evading our laws and giving those engaged in our business preferential treatment denied our citizens who will be impoverished thereby. Nor should we destroy our dearly purchased merchant marine on that account.

The argument presented by petitioner on page "24" of his brief concerning congressional policy on indirect sub-

sidies has no bearing on our position, but it could be very aptly applied to the argument for increased dollars.

What petitioner and his supporting Governments are suggesting is an indirect subsidy to them at the expense of our taxpayers, our merchant marine and the seamen dependent upon it, as well as a further nullification of our policy to improve the standards of the merchant marine of all nations to equalize costs. In other words, lax application of our laws gives foreign operators the advantage of costs below that of competing Americans. The business thus taken away from our merchant marine adds to their dollars. The American taxpayer loses not only taxes on lost American earnings but bears the burden of increased subsidies to cover the losses of our merchant marine. The loss to America is not merely the cost differential, rather it is the diverted business volume. Obviously the large price we are asked to pay for so small a gain in insurance premium savings is disproportionate, as well as inequitable.

It is not too much to ask those who earn profitable dollars here to meet their obligations in kind.

It has never been the policy of this Court to legislate benefits for foreign nationals and their Governments in derogation of our laws and our vital interests.

While considering subsidies, it is pertinent to note that our Senate Committee Report on the Foreign Discrimination of our vessels, supra (pp. 2, 100), records that foreign vessels are substantially subsidized by their Governments and enjoy many privileges denied to others and they resist our attempts to secure parity for all operating out of our ports.

As a practical matter, petitioner's argument was ably answered by Secretary of Commerce, Charles Sawyer, in a speech to the Propeller Club at Los Angeles on October 10, 1952, where he said:

> "I am not unmindful of arguments that if our friends abroad were permitted to carry most or all of our ocean shipping, it will improve their dollar earnings. That is perhaps true.

The fact must not be lost sight of, however, that the keystone of the arch of capitalism in this world of today is America. It must be kept strong.

Furthermore, it has been estimated that if foreign lines had carried all of our world trade between 1919 and 1939, they would have earned from shipping alone only 5 percent of their dollar credits.

We could ill afford the destruction of an essential American industry to pay for this small increase in foreign purchasing power" (N. Y. Times—October 11, 1952).

From the very beginning of our national existence it has been the policy of the United States to construct and maintain a Merchant Marine. To that end, we have subsidized and are subsidizing this endeavor. We train seamen for that purpose at Government expense and afford them fair wages and humane safeguards for their safety and health as an inducement to the best elements of our manhood to engage in the Merchant Marine as a life's work.

While subsidies may not be desirable, they are nevertheless essential to our economic well-being and national defense. They are the accepted policy of our Congress and serve as a means to offset lower construction and operating costs abroad. In the same speech referred to above, Secretary Sawyer said, in substance: that, as against $23,000,000,000 in foreign aid, $326,000,000 to support potato prices for two years, $500,000,000 annually in highway subsidies, $100,000,000 for aviation facilities and $200,000,000 for rivers, harbors and dams, the sixteen years of shipbuilding subsidies had entailed only about $350,000,000 in subsidies, which had made possible the construction of more than 250 ships.

As a matter of enlightened self-interest, should we permit foreign operators with lower costs to operate their vessels in the American shipping trade free from our remedial statutes, thus giving them a greater competitive advantage to the further detriment of our Merchant Marine and its seamen?

In keeping with our doctrine of fostering world trade, we do not seek to eliminate foreign operators, or to give any improper advantage to our Merchant Marine. However, in using our ports and facilities and participating in our traffic, foreign operators should be subject to the same laws as are American operators.

POINT II

The historical background of our Admiralty Law supports the application of our laws to all who submit themselves to our jurisdiction and whose activities therein affect our vital interests.

Although this action was brought on the Civil rather than the Admiralty side of the Court, nevertheless, the "Jones Act is an integral part of the maritime law" (*Socony Vacuum* v. *Smith*, 1939, 305 U. S. 424, 59 S. Ct. 262) and the "rights of parties come within admiralty principles and Federal Statutes" (*Garrett* v. *Moore-McCormick*, 1942, 317 U. S. 239, 63 S. Ct. 246).

Therefore, we must seek in Admiralty principles the basis for petitioner's claim for the validity of the "Law of the Flag", the extraterritoriality of the foreign vessel and its immunity from responsibility for the laws of its host.

The ancient sea laws of Oleron, Wisby and the Hanse Towns make no mention of such rule.

Even if they did, we must keep in mind that vessels of those days, even up to the middle of the 19th century, were truly merchantmen. They were traders in the truest sense of the words. They were not carriers in a purely transportation business. Their conditions, methods of operation, sailings and ports of call varied materially from the vessels of today which are the counterpart of our trains and trucks on land and airplanes in the sky. In the slower tempo of those days vessels truly were casual visitors. Hence altered conditions require an altered rule.

History, however, does teach us that from the days of the conflicts between the Greek City States, Rome and Carthage, and amongst the continental maritime nations between the 16th and 18th centuries, the power of the sword superseded any nebular rule of law.

Philip C. Jessup in his "The Law of Territorial Waters and Maritime Jurisdiction" (1927) traced the rule in question.

He states that the British considered their sovereign power as absolute and exercised jurisdiction over foreign vessels without considering that excuses were necessary (p. 175).

He also states the American view to be similar to the English one, in that we vigorously rejected the fiction of the territoriality of merchant vessels and claimed the full legal power of the local sovereign to exercise its jurisdiction over foreign vessels in its ports (p. 191).

He concludes (p. 191):

> "It may be definitely asserted that the fiction of the territoriality of merchant vessels is not established in international law."

This conclusion is not restricted to the "peace and tranquillity" area. It includes civil jurisdiction, as well.

As early as 1790, in "The St. Olaf", 2 Pet. Adm. 428, a wage claim was litigated in our courts over consular objection. This case was cited by Jessup.

This acceptance of jurisdiction in suits between aliens and application of our maritime rules was extended to salvage, bottomry, collisions and other areas.

Discretionary rejection of such suits merely indicated lack of interest, not lack of power.

With seamen lacking the right to sue their employers for torts, until the advent of the Jones Act, there obviously could be few early citations on this subject, and we must depend on powers exercised in related fields and the expressions of our national policy in promulgating and accepting International Rules.

John Bassett Moore, in his "International Law Digest", confirms the Jessup conclusions by citations from American State Papers.

In Vol. 2, Sec. 204, p. 272:

> "The jurisdiction of every independent nation over the merchant vessels of other nations lying within its borders is absolute and exclusive (Mr. Buchanan, Sec. of State to Mr. Wise, Min. to Brazil, Sept. 27, 1845)."

There are no restrictions in this assertion of sovereign rights. Whatever limitations were imposed by our courts, confined to an exercise of discretion in each instance, were either for reasons of comity, or in the final analysis for lack of interest, to the United States, in the subject matter.

In the same volume, Sec. 205, page 297, after a discussion of the obligations of private vessels in foreign ports, the following rule was set forth:

> "Of course no exemption is ever claimed for injuries done by the vessel to property or persons in port, or for acts of her company not done on board, *or civil obligations,* or duties relating to persons not of the ship's company (Dana's Wheaton, Sec. 95, note 58)". (Emphasis ours.)

Thus a series of exceptions to the alleged immunities of foreign vessels is set forth.

It is clear that no vessel is free from the civil obligations of the port, and it must meet those obligations, whether arising from laws or from matters of public policy or national interest, equally with the vessels of its host.

This obligation, when taken together with the statement of our policy laid down by Mr. Randolph, Secretary of State, April 13, 1795 (Vol. 4, page 10, Moore's Digest):

> "Aliens in general, being within our limits and jurisdiction, are bound to respect our laws, and cannot exact any other mode of promulgation than that which is marked out for the information of our citizens.":

establishes the legal basis and national policy, since our nation's infancy, to hold aliens accountable for the observation of our laws, equally with our citizens.

The respondent takes the position that, based on our accepted national principles cited above, a vessel entering an American port has a civil obligation, when engaging in the commerce of that port and nation in competition with the merchant marine of that nation, to abide by the basic laws which govern its activities. As a matter of pressing public policy and overriding national interest, this must be observed to avoid the unfair advantage which would accrue to such foreign vessel , reason of its immunity to laws of its host. The point will be treated more fully in the unfolding of this argument.

An alien, under the policies of this Government has full recourse to our courts:

> "The policy of the United States in all cases of complaints made by foreigners is to extend to them the same means of redress as is enjoyed by our citizens" (Moore's Digest, Vol. 4, Sec. 536, p. 7).

In keeping with these broad sovereign powers our courts have constantly developed new concepts to meet the demands of our changing society and economy, widened their areas of jurisdiction, and broadened the fields of relief available to all who seek redress. Our legislation has kept pace with such development. And this was accomp'ished, in one of its most dramatic forms in the very activities with which we are concerned.

This process has not as yet ended. Nor will it end with this litigation. Most certainly it should not be set back by invoking outmoded rules not in harmony with our public policy and national requirements, or the needs of our times.

From the inception of our national existence, our Congress and our Courts filled the void left by the inadequacy of the then existing admiralty rules and their conflicting application by other nations.

The Maritime Laws of the United States have been developed through the blending of ancient admiralty principles with modern concepts of jurisprudence.

We are not bound by "general maritime law". There are no such fixed and undeviating rules finding international acceptance. The "Law of the Flag" rule itself, with far more than one "flag" asserting its dominance, connotes the sovereign right of each nation to accept or reject such law.

In the realm of seamen's rights it is wrong, in the United States, to apply, what, in this age, would be the harsh rules of old admiralty or even common law principles. Seamen, as wards of the Court, are protected by exceptions to such rules, which were developed through the years by judicial processes or legislation, both of which enlarged and extended their areas of protection.

Despite attempts to cling to the old rules, and the encroachments of the common law and principles of workmen's compensation, the law of admiralty merged these conflicting rules to form a distinct and separate body of law.

The Judicial and Legislative development of our doctrine in applying the "Law of the Forum" rather than the "Law of the Flag" naturally grew and kept pace with the economic development of these United States and its vital interests. Concurrently, and in all possible areas, it has also been our avowed policy to avoid unilateral action. We do endeavor to enlist international support for conventions standardizing maritime conditions and rules throughout the world to raise standards to our levels. But we do not and should not delay the improvement of our standards while waiting for foreign nations to catch up with our pioneering pace. Nor should we permit them to hinder our progress. Until complete success attends our efforts in raising foreign standards, as a matter of preserving our own national interest, we must apply our laws within our orbit and sphere of influence. We cannot abdicate in favor of foreign rules in derogation of our rights and standards.

Some of the cases and statutes illustrative of this historic development are:

The Scotland, 105 U. S. 24 (1881), and *The Belgenland*, 114 U. S. 355 (1884), are admiralty cases involving collisions on the high seas. While not directly in point, they do clearly enunciate the doctrine that our Courts will apply the Maritime Law, as fixed by our legislature and accepted by our Courts, to foreign owners and vessels for events occurring on the high seas. Thus, the "Law of the Forum" superseded the "Law of the Flag".

While there was some dicta in these cases that the "Law of the Flag governed seamen's contracts" and "internal affairs of the vessel", such dicta was overruled by succeeding rulings of this Court in the *Patterson, Strathearn* and *Titanic*, cited infra.

In *Patterson* v. *Bark Eudora*, 190 U. S. 169 (1903), the question concerned the application of an American Seaman's Wage Law, enacted by Congress, to foreign seaman. The power of Congress was upheld, with the Court negating the claimed "flag" rule, stating (p. 176):

> "Yet when a foreign merchant vessel comes into our ports, like a foreign citizen coming into our territory, it subjects itself to the jurisdiction of this country."

The Titanic, 233 U. S. 718 (1913), broadened the base of the application of our laws to two foreign citizens of the same nationality for a tort on the high seas.

It is significant that the British claimant, Mellor, in opposing the application of the British shipowner for relief under American limitation statutes, offered the same arguments as does the petitioner herein.

It was claimed that on land the lex loci delicti was universally applied; that on sea it was the law of the flag; that the vessel flying the British flag made British law the lex loci delicti, thereby fixing the limit of its liability; and that the statutes of a State or Nation have no extraterritorial effect, otherwise a shipowner would be subjected to

different liabilities in different jurisdictions for the same event.

Mr. Justice Holmes disposed of the last argument by holding that the fact that the British owner might be sued in many jurisdictions, subject to local rule in each case, with divergent results and different liabilities, was not a valid reason for denying application of the American statute. The diverse nationalities of the various claimants was not controlling, since there was a separate appeal filed by the British subject.

While it is true that British tort obligations are generally created by British law, Mr. Justice Holmes noted the well recognized exceptions when he wrote (p. 732):

> "But it is also true that the laws of the forum may decline altogether to enforce that obligation on the ground that it is contrary to public policy or may decline to enforce it except within such limits as it may impose. Cuba Railroad Co. v. Crosley, 222 U. S. 473, 478, 480. Dicey, Conflict of Laws, 2d ed., 647. It is competent therefore for Congress to enact that in certain matters belonging to admiralty jurisdiction parties resorting to our courts shall recover only to such extent or in such way as it may mark out."

The Seaman's Act of 1915 was enacted as a result of the pressing need for an American merchant marine during world upheavals, whether we would be at war or not.

This law was intended for the benefit of all seamen, since at that time we admittedly had to depend on foreign seamen to man our vessels. That it applied to foreign owners and seamen is implicit in the mandate to the President to abrogate all treaties giving foreign consuls authority over their national seamen in our ports.

It is significant that all subsequent conventions afforded such foreign consuls a very limited and, in effect, merely courtesy and advisory capacity. Each such convention expressly limited any power on the part of such consul by the words:

> "* * * that such jurisdiction shall not exclude the jurisdiction conferred on local authorities under existing or future laws."

If local courts had jurisdiction, then assuredly federal courts had equal authority.

The alleged congressional quotations on page 20 of petitioner's brief, indicating that "some" members of Congress were not happy about the application of the 1915 Act to foreign ships, is as clear a demonstration as possible of the awareness of Congress that in enacting this legislation it was intentionally including foreign vessels and seamen subject to its provisions. The passage of the Act in the face of such expressions of doubts manifests the intention to include alien seamen within the beneficent provisions of the legislation.

We also desire to incorporate the quotation from a Senate Report set forth on page 22 of petitioner's brief:

> "*No interests but American interests* have been kept in view. We are sure that other nations will look after their citizens and their needs, and if our business is to be cared for, we must do it." (Emphasis ours.)

This is precisely our position.

Vital American interests are involved in the operation of foreign flag vessels in our stream of commerce. Therefore, our laws as enacted by Congress and interpreted by our courts shall apply equally to all, regardless of national origin of the parties. That was the express intention of Congress as indicated in the above quotation.

In *Strathearn SS. Co., Ltd.* v. *Dillon*, 252 U. S. 348, 40 S. Ct. 450 (1919), this Court gave a foreign seaman signing on a foreign vessel in a foreign port the right to sue in our courts for relief under the aforesaid Seaman's Act, in spite of the fact that he signed a contract abroad which denied him such rights.

The Jones Act was enacted in 1920 as an amendment to the Seaman's Act of 1915. As such, it partook of the broad coverage of the latter.

The reference to "any seaman" was a generic term and of wide application to those partaking in maritime activities, regardless of type of labor or nationality.

In *Uravic* v. *Jarka*, 282 U. S. 234, 51 S. Ct. 111 (1931), Mr. Justice Holmes considered the very question as to the categories of employment and the foreign flag of the vessel. To the argument that longshoremen were not specifically included and that courts previously refused to afford in rem relief to seamen on foreign vessels, he pointed out that the act *"is directed to extension, not restriction"* and framed the issue as follows:

> "But the question is not whether they were thought of for the purpose of inclusion, but whether they were intentionally excluded from a description that on its face includes them."

He went further and pointed out that there was no reason why the law should not have universal application, posed the question as to whether *"general words should not be generally applied"*, and added:

> "It is always the law of the United States that governs within the jurisdiction of the United States, even when for some special occasion this country adopts a foreign law as its own."

The only limitation that he placed on the area of the Jones Act is contained in the comment that:

> *"If* it should appear that, by valid contract or special circumstances, seamen on a foreign ship *should not* be protected by the statute, it will be time enough to consider the exception when it is presented." (Emphasis ours.)

There is small comfort indeed in this opinion of Judge Holmes for the limitation of the Jones Act to exclude a foreign seaman who was included by its general words "any seaman", in conformity with our public policy and national interest.

There are no "special circumstances" in this case calling for an exception to the coverage of the Jones Act.

On the contrary there are "pressing circumstances" demanding its full and complete application.

Nor is a valid contract presented, in keeping with our mores and our law, to justify the exception in good conscience.

It is respectfully submitted that the "Articles", petitioner's Exhibit "A" (p. 45) are contrary to our public policy and contravene our laws in that:

1. No new "Articles" are signed for each voyage. It was and is the practice of petitioner to add lists of names to the same "Articles" as seamen sign on and off the vessel throughout many voyages.

2. It was admitted that the "Articles" were indefinite (fols. 139, 145). Such indefiniteness was part of the plan to disguise and conceal the true scope of each advertised voyage from and to American ports.

3. It provided for a discharge of the seaman on seven days' notice at any port. The corresponding right to leave cannot atone for the danger inherent in permitting owners to strand seamen wherever they will to do so.

4. The "Articles", actually contemplating voyages within the orbit and in the service of the United States, provided for a limitation of the owner's liability, and

5. They concealed the names of the true owners and operators by failing to show that the voyage was a joint operation with the West Coast Line, Inc., and Wessel-Duval & Co., Inc., as reported by the Maritime Commission in 1940 A. M. C. 1515.

On the point of indefiniteness alone our courts should not recognize the validity of these "Articles".

In *The Quogue*, 261 Fed. 414, affirmed 266 Fed. 696, 4 Cir., 1920, Articles calling for a voyage from Baltimore

to any port, in the world, wherever the Master directs, and return to the United States, not exceeding six months, were vague and uncertain as to the voyage and the services contemplated. The law is so well settled that a further citation of cases is unnecessary.

And then if we add to this disability the seven-day discharge provision, the failure to have "Articles" for each voyage, the failure to name all the true owners and operators, and the attempt to limit liability, an act frowned upon and time and again rejected by this Court, all committed in a contract signed in the United States and covering a voyage from and to its ports, for the purpose of engaging in its commerce, it becomes imperative that our laws and our public policy should prevail.

As this Court held in *Garrett* v. *Moore McCormack*, 317 U. S. 239, 63 S. Ct. 246, while considering the validity of a release, a seaman "may not be technically incapable of signing a contract", yet, as wards of the court, any contract signed by them will be scrutinized closely and if any advantage to the shipowner is not compensated by extraordinary benefits it will be set aside as inequitable.

Here we have an inequitable contract and its provisions were properly interpreted for the benefit of the seaman, and the finding below that the Danish law was not binding on the respondent should not be disturbed.

In his "Law of Territorial Waters and Maritime Jurisdiction", supra, Philip C. Jessup pointed out that after the cancellation of consular conventions, in accordance with the expression of congressional will in the Seamen's Act of 1915, subsequent conventions were limited to:

1. A complete lack of jurisdiction by consuls in criminal matters (peace and tranquillity), except as permitted by local authorities, and

2. "Such officers shall also have jurisdiction over issues concerning adjustments of *wages* and the execution of *contracts* relating thereto, *providing local laws so permit.*" (Emphasis ours.)

Thus it is our express public policy, through a mandate of our Congress, that wages and contracts, necessarily including ship's articles, negotiated or executed here, should be governed by our laws.

Petitioner, and all other owners of foreign vessels, signing on seamen, regardless of nationality, in American ports, are required to comply with our policy, enactments and regulations.

This, petitioner failed to do. The articles, upon which he predicates his claim for immunity, clearly violate our standards, policies and laws in regard to such documents. They were, therefore, properly interpreted for the benefit of the seaman, and their self-serving exemptions from liability can have no weight in our courts.

If anything, these articles demonstrate the lengths to which owners will go, to disguise their identity, distort the scope of their voyages and drive the sharpest bargain to secure advantages in our ports denied to American shipowners.

It was neither the intention of Congress, nor the policy of our government, since its inception, to permit such rights. This is especially true of those like petitioner, who, in all but flag, are American, operating in American commerce.

The articles were and are void.

In *Arthur v. Compagnie Generale Transatlantique*, 1943, 5th C. C. A., 72 F. 2d 662, an action under the Jones Act against a foreign flag vessel and a plaintiff of unknown residence, the Court stated:

> "While the allegation as to residence is not sufficient to show citizenship of the plaintiff, the right of action is given to all seamen regardless of nationality."

And in *Kyriakos v. Goulandris*, 1945, 2d C. C. A., 151 F. 2d 132, Judge A. N. Hand wrote:

> "When Congress used the word 'seamen' in the Jones Act it employed a word of general application, embracing men of any nation who sail the seas. Had it wished

to limit the application of the statute to seamen of American citizenship or residence, the words to effectuate the limitation were at hand. The legislature did not see fit to use them."

Reason, justice, equality, under our laws, and our vital national interests demand that this Statute be applied as broadly and as generally as it was written, for the benefit of all seamen regardless of nationality or residence.

The constitutionality of the Jones Act was affirmed in *Panama Railroad* v. *Johnson,* 264 U. S. 375, 44 S. Ct. 391, 1924. This case also held that the reference in the Act to jurisdiction under the court of the district where defendant resides or maintains his principal office referred to venue.

In *Stewart* v. *Pacific Steam Navigation Co.,* 3 F. 2d 329 (1924), Judge Learned Hand ruled that foreign corporations were suable under this Act.

Uravic v. *Jarka,* supra, overruled the archaic view entertained by the Court of Appeals of the State of New York and enlarged the scope of the Jones Act to give relief to longshoremen injured on foreign vessels. The opinion of Mr. Justice Holmes, supra, also clearly indicated that the Jones Act should be generally applied to foreign as well as American seamen and owners.

Gerradin v. *United Fruit,* 51 F. 2d 417, cert. den. 302 U. S. 750, established the principle that American owners cannot avail themselves of the foreign flag shield.

In *"The Paula",* 91 F. 2d 1001, cert. den. 302 U. S. 750 (1937), a German seaman who signed on in Chile on one of petitioner's vessels for a voyage to the United States libeled the vessel and still sought relief under the Jones Act.

This case comes under the doctrine of *Plamals* v. *SS. Pinar Del Rio,* 277 U. S. 151, 48 S. Ct. 457 (1928), which held that the Jones Act did not authorize suits in rem.

Nevertheless, *"The Paula"* is cited as authority for the rule that a foreign seaman who signs on a foreign vessel in a foreign port is not covered by the Jones Act.

In doing so the commentators completely ignore the improper "in rem" proceedings and unfortunately they are not aware of two additional factors: first, all the facts were not before the Court since the true methods of operation of this petitioner were seemingly then unknown, and, secondly, the principle of public policy and the sovereign's paramount right to protect and preserve its own vital interests transcending its "peace and tranquility", were not presented for consideration.

Hence, this case is of doubtful value as a precedent, while its importance rests on the demonstration of the ease with which the "law of the flag" can shield operators and confuse issues.

In *O'Donnel* v. *Great Lakes Co.*, 318 U. S. 36, 63 S. Ct. 488, the jurisdiction of the Jones Act was disputed as to an injury incurred on land to a seaman serving on a vessel engaged on an intrastate voyage. While the facts are not the same, the shipowner there raised the same issue as does petitioner, claiming that the jurisdiction of a tort is governed by the place of injury under the Jones Act.

This Court rejected such theory and Mr. Chief Justice Stone probed the fundamentals of the Jones Act jurisdiction and pointed out that neither maritime rules nor our admiralty law had previously provided a remedy for negligence against an employer and that the Act was an enlargement of our substantive law and was not restrictive in its remedy, holding "that there is nothing in the legislative history of the Jones Act to indicate that its words 'in the course of his employment' do not mean what they say", and concluded that the Act applied whether the vessel engaged in interstate commerce or not, stating (p. 42):

> "The right or recovery in the Jones Act is given to *the seaman as such*, and as in the case of maintenance and cure, the admiralty jurisdiction over the suit depends *not on the place where the injury is inflicted* but on the *nature of the service* and its relation to the operation of the vessel plying in navigable waters." (Emphasis ours.)

Gambera v. *Bergaty*, 132 F. 2d 414 (1943); cert. den. 319 U. S. 742, 63 S. Ct. 1030, afforded relief to a foreign seaman against a foreign owner on a voyage which began and ended in the United States.

Judge Learned Hand wrote the opinion, evidently granting relief on the basis of the fact that the voyage began and ended in the United States. Considering his comments on page "53" of his brief, petitioner approves of this decision.

However, since this was a foreign vessel, it is difficult to see how it could engage in a coast-wise voyage. The report is silent on this point. But obviously this must have been just one leg of a foreign voyage. This point is significant in relation to the discussion of the *Kyriakos* case that follows.

Kyriakos v. *Goulandris*, supra, gave relief under the Jones Act to a foreign seaman on a foreign vessel who signed on in New York for a voyage from and to the United States, and who was injured in an American port. This decision was based on the sweeping terms of the statute and the broadening and liberalizing of the rules governing the subject litigation.

It should be noted that the reported case indicates that *Kyriakos* sailed from Newport News and then the vessel came to Fernandino, Florida. The sequence of events indicates this to be so, rather than the voyage having proceeded to foreign ports before the injury. Therefore, it appears that *Kyriakos* was injured while on a voyage from one port in the United States to another.

This is similar to the factual situation inferred from the *Gambera* case. In both cases, it is reasonable to assume, the injury occurred while proceeding from American port to American port.

Unfortunately Judge Learned Hand neither distinguished nor mentioned the *Gambera* case in *Kyriakos*. The majority opinion did.

Certainly the fact, that Gambera signed on for a coast-wise voyage and *Kyriakos* for a foreign voyage, should not be pivotal.

It appears from a reading of the *Gambera* opinion by Judge Learned Hand, that the controlling factor was the nature and scope of the voyage, which was American.

But in *Kyriakos*, a voyage that starts in Newport News and then proceeds to Florida, or even if it had proceeded to a foreign port and then back to Florida, likewise creates a voyage, American in scope.

We cannot escape the clear expression of Judge Learned Hand's ruling in the *Gambera* case, that:

> "We see nothing in the definitory section § 713, Title 46, U. S. C. A., to limit the application of the Act to American ships or American citizens. As to ships *Uravic* v. *F. Jarka Co., supra,* was an express answer and thereafter the definition no longer offered an obstacle to including foreign seamen."

Despite Judge Learned Hand's *Kyriakos* dissent, we rely on his mention therein of the elements necessary to give our courts jurisdiction under the prevailing conditions.

First, we may note that his opening words were:

> "There is much temptation to affirm this decree * * * *"

What was it that prevented such affirmance on his part?

Implicitly, the *Kyriakos* dissent points out that the decision related to a very narrow area and did not afford the full relief called for by other factors that were involved and not presented to the Court.

It is upon the following phrases found in the dissent that we say, had the facts herein, and the arguments thereon, been presented to Judge Hand, his decision might well have been with the majority.

On page 159, in discussing whether or not the Jones Act attached to foreign vessels at sea or at a foreign port, he said:

> "At least nobody suggests that the Jones Act does so."

Did Judge Learned Hand intend to rule that seamen sailing on vessels of foreign registry but under American ownership, or American citizens signing on foreign vessels in our ports, who are injured in a foreign port or on the high seas, are not covered by the Act?

Obviously, the decision of the majority did find that it so applied, because in *Taylor* v. *Atlantic Maritime Co.*, 1950, 2d Cir., 179 F. 2d 597, cert. den. 341 U. S. 915, 71 S. Ct. 736, he himself ruled that the distinguishing elements in the *Kyriakos* case were not pivotal

> "and that the rationale of that opinion (Kyriakos) went further; that it construed the Jones Act as imposing its terms on all owners who sign on crew in an American port."

Thus the *Kyriakos* decision extended the Jones Act to the high seas and foreign ports based on the "signing on" element.

Judge Hand objected to the fact that this extension was not urged.

We urge it here.

On the same page he discussed the "law of the flag" favoring its application:

> "* * * * except for some pressing reason of domestic policy, to disregard it."

It is apparent that the prevailing conditions relating to the operation of foreign vessels in our ports were not presented to the Court for its consideration to determine whether our public policy is at stake.

Our case is predicated on this and the following point made by Judge Learned Hand, and we are urging it with every fact at our command.

He then goes on to say in the dissent:

> "* * * * There are occasions, of course, when *the state of the port has an overriding interest in insisting upon its own ideas;* but in the case at bar the question does not touch a breach of peace * * *." (Emphasis ours.)

In the words "overriding interest" and "pressing reason of public policy" he struck the core of the jurisdictional element, present in this case and, according to Judge Hand, absent in *Kyriakos*.

However, we disagree with his conclusion and point out that Judge Hand may have been carried away by the nostalgia for an old rule that has been honored as much in its breach as in its observance.

He did fail to balance the economy of the vessel with the economy of its host.

Note, please, his last clause in the above quotation. He states that there was no "breach of peace" in *Kyriakos*. Yet the facts clearly disclose that Kyriakos was assaulted ashore in an American port. Is that not a breach of peace?

And if our courts can take jurisdiction in criminal matters of no vital national import, is it not natural that the same power exists when an "overriding" national interest is at stake? Certainly it does not matter very greatly to us whether Kyriakos' assailant is tried and punished here rather than in Greece, if that were really the home of the vessel. In fact, conceding jurisdiction to the flag would save us the cost of trial and imprisonment.

As to the cases cited by Judge Learned Hand in the footnote of page 159, the rules formulated by them and the dicta therein are not quite applicable to the *Kyriakos* case or the facts herein. *"The Scotland"* and *"The Belganland"*, supra, are in support of our case, since they enunciate the doctrine of the primacy of the "law of the forum" over the "law of the flag". The dicta regarding seamen's wages and contracts has been superseded in *Strathearn* v. *Dillon* and *Patterson* v. *Bark Eudora*, supra. And Judge Swan in *"The Paula"*, supra, ruled that a personal injury claim does not arise out of the "internal economy of the vessel or its discipline".

Thus, despite all "regretful" arguments contrary to the majority in the *Kyriakos* case, Judge Learned Hand unerringly pointed to the essential conditions, underlying practically all of the litigation brought by foreign seamen

in our courts, which justified the assumption of jurisdiction by our courts in extending the broad application of the Jones Act to foreign seamen serving on foreign vessels regularly engaged in the transportation of our commerce, thereby affecting our overriding national interests and interfering with our established public policy.

In *Taylor* v. *Atlantic Maritime Co.*, supra, Judge Learned Hand ruled, in a case of a foreign seaman signing on a foreign vessel in the United States, that residence and place of injury were merely incidental and that the "rationale" of the *Kyriakos* case "construed the Jones Act as imposing its terms on all owners who sign on crews in the United States".

Nor does the Jones Act stand alone as a legislative mandate applying to foreign owners and seamen using our ports. The Harter, Limitation of Shipowner's Liability, High Seas Death, Stand-by, Passenger and other statutes equally subject, and accord privileges, to foreign citizens.

Thus it is clear that our Legislature and our courts have set the standards of the laws of the United States in the very areas which it is claimed the "law of the flag" must apply. The Jones Act is only one of the many such laws, regulations and doctrines so applied to foreign shipowners and seamen who use our ports.

If our laws are applicable to foreign shipowners when to their advantage, to foreign passengers, to commercial documents valid where drawn, reason and justice demand that they be applied for the benefit of the seamen who make possible the carriage of goods and passengers from and to the United States.

We must conclude that the ancient maritime rule did not abrogate the absolute power of the sovereign within its domain. The United States always possessed the unquestioned right to impose its laws upon all vessels entering its ports. Only a successful challenge by force, a self-imposed treaty limitation, or any abject surrender of national interest could limit such sovereign power.

While it may be very desira le to have a definite and certain body of laws and standards imposed upon the international community, it must be regretfully conceded that no world body has ever existed possessing the unchallenged power and wisdom to provide such uniformity and to enforce its application.

Here in the United States the enlightened policy of our legislatures and our courts have constantly liberalized and broadened the scope of remedial legislation for seamen, culminating in the Jones Act, and our courts have properly enlarged its benefits within its broad scope.

POINT III

The law of the forum, in whose commerce a foreign vessel engages, follows such vessel while so engaged and is equal in right and co-extensive with the law of the flag.

Respondent's position herein does not involve any new postulates, extensions of General Maritime Rules or our statutes, nor does it expand the jurisdictional orbit of the United States.

In the absence of a code of international law applying with equal force to all nations alike and an effective enforcement body, we must, of necessity, rely upon and apply the maritime laws accepted, enacted and developed by our legislatures and courts.

The general rule of the "law of the flag" is not rendered nugatory on the basis of the rulings requested herein.

Obviously, the high seas leave a vacuum that must be filled by an appropriate body of rules of which "the flag" is but one.

But there are exceptions and limitations to this rule:

b. Where the peace and tranquillity of the host nation is involved.

2. Where the domestic policy or overriding national interest is involved.

And to these two we add:

3. Where the "foreign flag" vessel or its sister ships of the owner are regularly engaged in carrying the commerce of another nation from and to and to and from its ports.

As to the first two exceptions, their validity and general acceptance cannot be doubted. To hold that a foreign flag vessel possessed complete immunity from the laws of the nations it visited and to whose jurisdiction it submitted itself would be folly. A host nation has the natural right to protect its own interests. To hold otherwise would be a negation of sovereignty.

Nor is the third exception a novel one.

It is commonly accepted and requires no argument that all those who do business within a jurisdiction affect its interests and become subject to its laws.

We must keep in mind that the flag rule when formulated did not contemplate the ocean-borne transportation business as it is now conducted.

Up to the middle of the nineteenth century merchantmen were what their name implies, traveling merchants and traders. Transportation for hire was not an accepted and common practice. In those days vessels were truly casual visitors to the ports of the world.

Today these trade routes have been converted to sea highways for the carriage of goods, not their trade. Such routes have been highly organized. Shipowners, responsible for the bulk of such transportation, have divided such routes into independent ventures. Vessels would be assigned, for example, between the Mediterranean and Far Eastern ports, North Atlantic and African ports, American and South American ports, ad infinitum, without any of these vessels carrying the commerce of the owner's country or the ship's flag.

Because of the situation above, it would be neither practical nor right to inquire only into the scope of the particular voyage on which a vessel was engaged whenever a cause of action arises. It may very well be that a common owner may have temporarily diverted one vessel from one of its trade routes to another. Or else he may have chartered a vessel to meet a pressing engagement. Under those circumstances, this vessel may truly be a casual visitor to the nation whose interests are involved. But actually such vessel would be engaged in the regular business of the owner or operator. Or else such sailing may be the maiden voyage on the particular route.

Therefore, in determining the scope of a vessel's voyage, the prior activities of the owner or operator in the regular commerce of the affected nation should be determinative of the scope of what may appear to be a casual call of a vessel temporarily assigned to such a trade route.

At one time the ship's flag and the owner owed a common loyalty to one sovereign.

Today, with intricate corporate relationships, one owner may have several corporate alter egos, each of different nationalities, and each of these instrumentalities would own and operate or operate vessels flying the flags of still other foreign nations.

The vessel's flag is no longer a true indication of its ownership, operation or allegiance, and, aside from the benefits from registration fees, the country of the flag may have no interest in the vessel's affairs.

Therefore, the original purpose behind the application of this rule, the overriding and exclusive interest of the sovereign in the vessels engaging in his commerce, no longer has a basis in fact, with few exceptions, and lacks moral justification under modern ocean transportation conditions.

Vessels no longer have a primary effect solely upon the country of their flag, with a mere casual and incidental effect upon the countries whose ports they visit. On the contrary, they have at least as great an effect if not

greater, upon their hosts. This is true even where the flag and ownership is the same. Such vessels, of necessity, affect other countries whose commerce they carry and with whose merchant marine they compete. Therefore there is neither right nor reason to apply the law of the flag in derogation of the interests of the host nations.

Any nation wherein a foreign flag vessel conducts a substantial part of its business has a right to impose its laws upon the stranger who competes with its citizens.

This is implicit in the right of each nation to assume jurisdiction and apply its laws where its domestic policy and overriding interests are involved.

Thus we can say that if a vessel or vessels regularly carry goods from and to and to and from the ports of a particular nation and thereby participate in the ocean transportation business of that nation, competing with its nationals, such vessels, pro hoc vice, assume the national identity of this host nation for the purpose of liability under its laws and such laws should follow the vessel wherever it goes while engaging in a voyage carrying the commerce of that nation.

It is the scope of the voyage which should determine the liability of the vessel and its owner. If engaged in the carriage of American commerce, both are subject to the jurisdiction and laws of the United States.

It is no more than just and reasonable that where we have two spheres of influences, affecting two separate national entities, the laws of each shall be applied to the sphere of each, and neither nation should have the right to impose its laws within the sphere of the other.

The "law of the flag" under this rule still prevails with all its majestic serenity in the proper area for its expression, within its own jurisdiction.

But it cannot and should not prevail in the jurisdiction of dominant or equal interest where it conflicts with public policy and overriding national interest.

True, there is an apparent conflict.

But such conflict is inherent in international trade and is common to all men of all lands who do business subject to the laws of other countries.

It is not for this Court or the court of any nation to commit economic and political suicide by acceding to laws and policies of other states.

After all, when the Ford Company engages in the automobile manufacturing business in Great Britain, Germany, Canada and other countries, it is subject to the laws of those countries and not of the United States.

The fact that those foreign laws may have an impact on our economy, by way of expropriation or otherwise, does not entitle the United States to claim that its laws should prevail within a foreign jurisdiction.

Nor does the fact that such foreign operation of plants may injure our export trade of cars and cause unemployment to our labor, justify the application of our laws in such foreign countries to control the activities of our nationals in the latter's economy.

By the same token, petitioner's Government should likewise be limited in its right to impose its laws upon its nationals doing business here.

There is no real distinction between doing business on land and on the sea. The extension of the interest of the United States over the "no-man's land" of the sea lanes carrying its commerce is as substantially real as its jurisdiction over the rails, highways and waterways within its boundaries. And that holds true for any nation. This is a necessary adjunct to the doctrine of the "Freedom of the Seas". Otherwise our affairs would be governed by foreign laws in derogation of our rights in our commerce on the seas.

It is not a valid argument, in opposition to the premise advanced herein, to say that such rule places a burden on the owner to know and be subjected to the laws of those nations wherein and for whom he conducts a regular business in the carriage of their commerce.

After all, an exporter and importer, regardless of his nationality, is required to know the contract and commercial laws of each nation with which he does business. In addition, he is responsible for the multifarious tax, trade, customs and port regulations, which change with rapid regularity. Every business man, whose interests are extensive, is subject to the laws of every nation wherein he does business.

A shipowner is not entitled to an exempt and preferential treatment on that score. The various laws and regulations are known to him. It is all part of his cost of doing business.

Nor is it a valid objection to hold that a shipowner may be liable for different amounts, under different theories, in several jurisdictions, because of one event or disaster.

A new liability is not being posed by this rule.

In the case of loss by collision, or other disaster, owners are subject to many suits under the laws of more than one country. As Mr. Justice Holmes held in *The Titanic,* supra, such several differing liabilities in several different jurisdictions is no bar to a suit in any nation holding concurrent jurisdiction and is no reason for the application of the law of the flag. It is the burden and expense of doing business in more than one land and falls equally upon the citizens of all nations so engaged.

So, too, in the case of the seamen who serve on such vessels. They may very well have the election to sue under the laws of two or more jurisdictions, depending on which is more favorable. To say that is unjust, because of mere fortuitous circumstances, is as absurd as to say that it is unjust that a man was born a Dane and had to content himself with the lower wage scale of that country, whereas if he had been born an American, his wage scale would have been higher. Fortuitous circumstances are the portion of every man and can no more be avoided than the elements.

Such election of rights and remedies is not reprehensible and is duplicated in many branches of the law in all com-

tries. As this Court ruled in *Panama R. R.* v. *Johnson*, supra:

> "There are many instances in the law where a person entitled to sue may choose between alternative measures of redress and modes of enforcement; and this has been true since before the constitution. But it never has been held, nor thought, so far as we are advised, that to permit such a choice between alternatives otherwise admissible is a violation of due process of law. In the nature of things, the right to choose cannot be accorded to both parties, and, if accorded to either, should rest with the one seeking redress rather than the one from whom redress is sought."

As to the fact that under this rule American seamen would have similar rights of election, all we can say is, that it would be a consummation devoutly to be wished for, to reach the period when the standards of other nations will meet or exceed ours. We assume that there would be more favorable legislation elsewhere, otherwise the right of election would be meaningless. In fact, the policy of our Government and a substantial part of our wealth is being devoted to that end.

At least our merchant marine would be spared the unfair competition and penalties it now suffers by reason of the discrimination in foreign ports. We stress equality and not discrimination or undue advantage. By all means let our seamen have such an election. Their rights are broadened, not restricted, thereby.

In the final analysis, and reduced to its simplest element, the issue herein hinges on whether or not a sovereign power has the right to exercise its jurisdiction and apply its laws to all who do business within its stream of commerce, citizen and alien alike.

Even though we are to assume that the Jones Act applied only to American vessels and seamen, and judicial opinion is to the contrary, nevertheless, our Courts have the inherent power to apply it to foreign vessels who partake

of and take on the characteristics of American vessels in the carriage of our sea-borne commerce. The Courts can pierce whatever veil, shroud or pretense that may be interposed and say, in this instance, you are an American vessel, affecting vital American interests, and you are subject to the same liabilities that apply to our own vessels.

POINT IV

Petitioner rests his entire case on a major premise based on incorrect assumptions of fact and therefore his arguments are neither appropriate nor valid and his cases are not in point.

The question presented by the petitioner presupposes the existence of a state of facts concerned exclusively with an "all foreign" problem, with no major point of contact with, concern to, or impact upon the United States.

He cannot escape the public records and open publication of his activities, over these many years, attesting to the place he occupies in the American Shipping Industry and participation in the carriage of America's commerce from and to the United States. The fact is that the record below did not require such proof under the law then prevailing in the Second Circuit. The respondent should not be penalized for adherence to such prevailing rule. Further proof on petitioner's position in American commerce is unnecessary. The public record, together with the record herein, remove every doubt on that score. The substantial question of public interest affecting our merchant marine, seamen and maritime welfare, as well as respondent's rights, requires that petitioner should not escape the consequences of his acts.

The issue, rather, turns on whether this Court has the power and consequent duty to apply American law equally to citizens and aliens who engage in the business of this

country and affect its domestic policy and overriding national interest pertaining to its economic welfare and social philosophy.

Point I of petitioner's brief is likewise fallacious. It sets forth only a part of the elements under consideration. It fails to include, as in the case of the major premise, the factor of business performance in, and effect upon, the United States.

Furthermore, its conclusion does not conform to the fact that in *Uravic* v. *Jarka, Arthur* v. *Compagnie Generale Transatlantic, Gambera* v. *Bergotty, Kyriakos* v. *Gouladris* and *Taylor* v. *Atlantic Maritime,* supra, all contain clear judicial confirmation that the Jones Act does apply to foreign vessels and foreign seamen under appropriate conditions.

It is doubtful if petitioner will press his second point requesting the "Lex Locus Delicti" to apply. He does not urge the law of Cuba.

In maritime torts, as stated by Mr. Justice Stone in *O'Donnell* v. *Great Lakes,* supra, jurisdiction

> "* * * depends *not on the place where the injury is inflicted* but on the nature of the service and its relation to the operation of the vessel plying in navigable waters." (Emphasis ours.)

Petitioner's limitation of the "Law of the Flag" only to matters affecting the internal economy of the vessel, likewise excludes essential existing factors from consideration.

Furthermore, in *"The Paula"*, supra, Judge Swan ruled that a maritime tort does not arise out of, or affect the internal economy or discipline of the vessel.

Under present day conduct of the business of ocean-borne transporation, vessels are not exclusively engaged in the commerce of their flags. On the contrary, in a very large and probably disproportionate percentage of instances, vessels are engaged in the commerce of and service to other foreign nations rather than those of their flags. Even where it serves the commerce of its flag, it is simultaneously

serving the interests of other nations. Under those circumstances, the imposition of the law of the flag upon nations having an overriding interest in such maritime activities is unjust.

In the absence of a unified and universal maritime law applied equally to all nations, the scope of the voyage of vessels should determine the appropriate jurisdiction and the applicable law. The public policy and interest of affected nations should not be nullified by the law of the vessel's flag.

The pivotal facts in *Kyriakos* v. *Goulandris* and *Taylor* v. *Atlantic Maritime Co.* are found in this case. The signing on in the United States, the voyage from and to the United States, petitioner's open and notorious engagement in American commerce and the act of negligence, more than meet the legal requirements for jurisdiction and liability as set forth in the cited cases.

In the main, plaintiff-respondent's arguments in the preceding points of this brief, amply rebut those offered by petitioner. There are, however, a number of significant statements in petitioner's brief that are rather illuminating.

For example, on page "23" of his brief, and in other places, petitioner stresses the fact that jurisdiction over foreign shipowners was not intended in the Jones Act, because the action must be brought where the owner resides or has his office. "What foreign shipowner can be found in the United States?" asks the petitioner. He then airily dismisses the importance of the Jones Act as relief for foreign seamen because there are only "isolated" instances where owners can be found here.

If that were so, and the liability to foreign owners was so minimal, why does petitioner put forth such efforts to nullify so ineffectual a statute? Why did four foreign Governments intervene and claim that they were interested in the outcome of this appeal?

Petitioner also sheds tears for the injured Danish seamen who may never return to the United States and thus lose his rights. We thought that that was the end sought by

him. He also commiserates with the grief of the Danish shipmate who cannot avail himself of our rights and remedies. Both situations, if petitioner and his intervening Government are sincere in this protestation, can be cured by remedial Danish legislation. By their own implicit admission, Danish seamen prefer our laws to their own.

The records of our District and Appellate Courts belie the bland assumption that foreign owners cannot be subjected to our jurisdiction.

The case for congressional intention to afford immunity from the Act to foreign shipowners and elimination of its benefits for foreign seamen must be very weak indeed to require so weak and so incorrect an argument.

The indirect subsidy argument, on pages "24" and "25" of petitioner's brief is somewhat obscure.

How will equalizing the liability burdens of foreign and domestic shipowners place a cost burden upon the American taxpayer or his Government?

On the contrary, acceptance of petitioner's thesis would place a direct and costly burden upon American shipowners by way of higher costs than that of the foreign owners, with a consequent business loss to the domestic owner, a tax loss to our Government, a wage loss to our seamen and a deterioration of our merchant marine, so essential to our defense in these days of stress.

And who would benefit thereby?

The foreign shipowner, of course!

And is that not an indirect subsidy?

Whose foot does this indirect subsidy shoe fit?

Whose subterfuge is this?

As we stated before, and will repeat again and again, the rule proposed by plaintiff-respondent is not discriminatory; it merely calls for parity and equality under the law of the land where citizen and alien alike, do business.

We agree heartily that conventions and treaties, and we add recognized and enforceable rules of International Law, would be the ideal way to achieve uniform laws and uniformly high standards.

As petitioner points out on page "25" of his brief, that is the policy of the United States.

But he is woefully silent on the policies of the foreign Governments toward accomplishing this end.

No matter what adopted convention we may consider, it is well known that the standards of American laws and regulations are higher.

Why is it that we have so few conventions in that connection and why is it so difficult to secure international acquiescence and ratification of superior standards?

Certainly our policies and our efforts, as petitioner admits, are not at fault.

And does petitioner propose that until all foreign nations, acting in their own national interests, accede to such conventions, we must abide by and submit to the unilateral desires of those nations in giving effect to their laws within our commerce, to the detriment of our economic welfare and defense needs?

What petitioner is proposing is an abdication of sovereignty and a direction to this Court to consider the higher insurance costs of foreign owners paramount to the duty of fairly and equally applying our law to all who submit themselves to its jurisdiction and do business in the United States stream of commerce.

Many of the cases cited by petitioner are completely foreign to the issue herein and all are subjected to a strained application to facts as he would like them to be and not as they are.

In *New York Central R. R. Co.* v. *Chisholm*, 268 U. S. 29, 45 S. Ct. 402 (1925), an American railroad worker, injured while his train was in Canada, sued under the Federal Employer's Liability Act and recovery was denied.

The precise point at issue was the absence of any express authority in the F. E. L. A. for extraterritorial jurisdiction or circumstances inferring such purpose.

Both elements are present in the Jones Act.

As Mr. Justice Stone pointed out in *O'Donnel* v. *Great Lakes Co.*, supra, the circumstances of a seaman's services

necessitated the extension of the act to include injuries on the high seas or in domestic and foreign ports. It is also implicit in the very words of the act "in the course of his employment", that the nature of the services and not the place of injury should govern. Thus the fallacious inference drawn from the *Chisholm* case has no application herein.

It is significant that in *Grand Trunk Ry. Co.* v. *Wright*, 21 F. 2d 814 (6 Cir.) (1927), affirmed 278 U. S. 577, 59 S. Ct. 176, also cited by petitioner, the Circuit Court of Appeals emphatically rejected the applicability of the *Chisholm* rule to a maritime cause.

It also rejected the "Law of the Flag" rule for the same reasons as respondent does herein.

In that case a Canadian ferryman, a Canadian railroad, a Canadian contract of employment, services performed mainly in Canada, with only a casual and incidental call at Detroit, and an American ship flying the American flag but chartered to the Canadian railroad, and a suit under the Federal Employers' Liability Act were involved.

The Court emphasized the casual connection between the employee's services and the United States. It pointed out that the mere crossing of the imaginary dividing line in lake waters is insufficient to invoke the Rule of the Flag. How such rule could be applied in a Federal Employers' Liability Act case was not explained. The Court held that here the scope of the voyage and the employment was essentially Canadian and neither the flag of the vessel nor the place of injury could serve as jurisdictional elements.

However, this Court in affirming did not consider these elements, but decided the matter on the basis of *Union Pacific R. R.* v. *Wyler*, 158 U. S. 285, which ruled that an amendment, which departed from the pleadings, could not be made after a statute of limitations had expired.

If anything, this case supports respondent's claim that Chisholm is not applicable and that the effect and scope of a voyage should determine maritime jurisdiction rather

than the law of the flag. It also negates the "Lex Loci Delicti" argument.

Jamison v. *Encarnacion*, 281 U. S. 635, 50 S. Ct. 440 (1930), offers no conflict in facts or law with the issues in the subject application.

A stevedore who was assaulted by his foremen received benefits under the Jones Act, thereby enlarging its scope.

Petitioner makes no greater claim for this case than it affirmed the necessity of establishing negligence under the Jones Act.

Since the record in the subject matter discloses proof, charge and findings of negligence, no disharmony can be found between the two cases.

Cortes v. *Baltimore Insular Line*, 287 U. S. 367, 53 S. Ct. 173 (1932), petitioner argues, holds that some element of negligence must occur in the United States to secure jurisdiction under the Jones Act. That is not correct.

The facts in the *Cortes* case concern an American seaman in American waters, and how petitioner arrived at this unique conclusion escapes us. It is contrary to the express ruling of this Court in *O'Donnel* v. *Great Lakes Co.*, supra, which held that the nature of the service, and not the place of injury, governed.

In *Plamals* v. *S. S. Pinar Del Rio*, 277 U. S. 151, 48 S. Ct. 151 (1928), an injured foreign seaman, who had signed on in a foreign port, libeled the vessel.

The Court held that the Jones Act contains no authority to secure jurisdiction by way of a libel.

Naturally, the applicability of the Jones Act was not at issue and was not ruled upon.

In *Sonnessa* v. *Panama Transport Co.*, 298 N. Y. 262, cert. den. 337 U. S. 919, the record in the State Court indicates that the applicability of the Jones Act was not questioned by the defendant owner. Although flying a Panamanian flag, it was a subsidiary of the Standard Oil Company of New Jersey and was definitely liable at least under the doctrine of *Gerradin* v. *United Fruit*, supra.

For some unaccountable reason, the State Court, although the point was not at issue, ruled that it would not give effect to the Jones Act. Such limitation, by a State Court, of its own interests, does not concern this Court and certiorari was properly denied. This obvious divergence is of local concern and is of no import herein.

It is noteworthy that in *Resigno* v. *Jarka* (1928), 248 N. Y. 225, the New York Court of Appeals refused to give relief to another of its citizens, a longshoreman. (No application for certiorari.)

In *Uravic* v. *Jarka*, supra, on the same facts, the New York Court again refused relief to its citizens.

But this time this Court granted certiorari and unanimously reversed the State Court.

Nevertheless, in the *Sonneson* opinion (p 36, pet. brief) Judge Desmond cites the *Resigno* case as authority for the decision, totally ignoring this Court's reversal of the *Resigno* State doctrine in the *Uravic* case.

Furthermore, it is axiomatic that in matters partaking of Admiralty Jurisdiction, the Federal Courts do not follow the State Courts, but the contrary is true.

O'Neill v. *Cunard White Star Ltd.*, 160 F. 2d 246, concerns a foreign seaman aboard a foreign vessel with articles signed in a foreign port. The element of signing on in the United States is missing. However, the issue of the scope of the voyage and its relationship to American commerce should be the determining factor of jurisdiction. It evidently was not presented to the Court and no ruling on such issue was considered or made.

Wildenhus' case, 120 U. S. 1, and *U. S.* v. *Rodgers*, 150 U. S. 249, cover criminal matters. The correct exercise of police powers cannot be interpreted to represent a limitation of jurisdiction only to those instances where peace and tranquillity is involved.

In *Thompson Towing and Wrecking Association* v. *McGregor*, 207 F. 209, 6 Cir., 1913, a Michigan seaman, serving on a vessel of Michigan registry, recovered for an injury

in Canadian waters, in an action antedating the Jones Act. Here, too, petitioner's lex loci delicti argument is nullified. The decision is in harmony with the Jones Act and the Death on the High Seas Act. There is no conflict.

Slater v. *Mexican National R. R. Co.*, 194 U. S. 120, 24 S. Ct. 581 (1903), has no bearing on the issue. It concerns the common law rule of "Lex Locus Delicti" and is not applicable to maritime affairs. It merits no consideration on the issues herein.

American Banana Co. v. *United Fruit Co.*, 213 U. S. 347, 29 S. Ct. 511 (1909), has as little bearing as the *Slater* case. How an action for conspiracy can be applied to one in admiralty puzzles us.

If petitioner seriously accepts the doctrines of these and several other cases, as determining the rule herein, he should urge the jurisdiction and application of the laws of Cuba in this case. In comparing them with this case he is performing the rare intellectual treat of riding two horses in opposite directions at the same time.

The citation of *The Paula*, supra, is an excellent illustration of the factual situation which is crying for relief. The same petitioner and his counsel, as herein, were involved.

The District and the Circuit Courts were confronted by a case involving a German national, as libelant, proceeding in rem and in personam by way of a writ of foreign attachment, suing an admittedly Danish owner, whose vessel flew the Danish flag. The seaman had signed on in Chile for a voyage to New York.

There was no claim or proof that J. Lauritzen was not a bona fide foreign shipowner with no ties in the United States. The in rem nature of the proceedings lent color and truth to this apparent design.

Why *Flamals* v. *S. S. Pinar Del Rio*, supra, was not applied to the in rem action we do not know.

Naturally, there was no basis for considering the scope of the voyage as embracing an American activity within its commerce orbit, as is the situation herein, nor was such suggestion made or inferred.

But, at that time, Wessel Duval & Co. was operating this Danish vessel in the same ocean-borne United States commerce as is now being conducted in the name of its associated company.

This petitioner now comes to this Court and points to this case as authority for his immunity to the laws of the United States, not in spite of his activities, but on the basis of his implied denial of their existence (p. 65, pet. brief).

He assumes that because the Courts had previously ruled on his activity without having all the facts before them, that this Court will perpetuate the error.

Petitioner then proceeds to cite a portion of the prevailing opinion in *Kyriakos* v. *Goulandris*, supra (p. 138, pet. brief), for the proposition that the law of the flag applies. However, the citation specifically states that it "is true in the absence of any statute". Here we have the Jones Act, the statutory exception, and the further exception of "domestic policy" and "overriding interests of the sovereign" referred to in the dissenting opinion. It is also pertinent to note that Judge Augustus N. Hand immediately followed this excerpt with substantial valid reasons for its application.

As to the quotations in the petitioner's brief from the dissenting opinion, we refer to our consideration of the dissent in our Point III, supra, wherein we point out that it does not invalidate, but rather supports our position.

We also call special attention in the dissent to the words (p. 139):

"* * * accident of the port of call * * *."

Certainly, in this case, the calls at the Port of New York and other United States ports were not "accidents". They were regular recurrent acts of long standing. Judge Learned Hand's opinion was based on a given set of facts in which regularity of call was absent. We have no right to conjecture what his opinion would be on the facts herein. The same holds true for his opinion in the *Taylor* case.

The entire argument of petitioner is predicated on a complete disregard of the facts herein and the prevailing national situation. The prevailing conditions require that petitioner and all who partake of the American economy should be subject to our laws when our public policy or national interest is involved.

CONCLUSION

Your plaintiff-respondent, in offering his argument in support of the view that the Jones Act applies in a situation such as he found himself, has not strongly stressed the importance of the affirmance of the decision below to him and to many thousands of other foreign seamen who serve out of American ports in the carriage of the commerce of the United States. He has done so, not because he fails to realize and appreciate the benefits of the equal application of the laws of this country, but rather he has done so because of the substantially greater interest that is at stake for the American merchant marine, its seamen and the public welfare of the United States.

The real point at issue is not the intent of Congress in passing this Act, but the power of this great country, acting through its judicial arm, to protect itself against foreign vessels that, by indirection and misapplication of a rule not finding international acceptance, assume all the benefits and prerogatives of American vessels while at the same time callously avoid the disabilities and liabilities which should attend the assumption of such benefits under our flag.

Respectfully submitted,

RICHARD M. CANTOR,
Counsel for Plaintiff-Respondent.

GEORGE HALPERN,
of Counsel.

APPENDIX "A"

"CHART DISTRIBUTED BY THE NEW YORK CUSTOMS HOUSE"

JULY 1, 1951—JUNE 30, 1952

ENTRANCES			CLEARANCES		
Flag	*No. of Vessels*	*Net Tonnage*	*Flag*	*No. of Vessels*	*Net Tonnage*
Argentina	73	349,549	Argentina	73	340,779
Belgium	57	248,798	Belgium	57	250,801
Brazil	61	192,627	Brazil	59	187,881
Canada	244	395,547	Canada	246	395,975
Chile	27	131,185	Chile	27	131,185
Chinese	1	4,561	Chinese	1	4,561
Columbia	46	89,442	Columbia	46	89,442
Costa Rica	2	8,680	Costa Rica	3	8,715
Cuba	54	103,532	Cuba	54	103,532
Denmark	297	812,230	Denmark	295	801,440
Ecuador	15	31,648	Ecuador	14	29,542
Egypt	14	68,084	Egypt	14	68,066
Finland	42	77,865	Finland	42	78,566
France	140	1,171,846	France	142	1,182,108
Germany	101	233,998	Germany	99	227,943
Great Britain	855	6,261,949	Great Britain	863	6,291,386
Greece	52	263,944	Greece	52	263,935
Honduras	112	270,945	Honduras	110	267,508
Iceland	31	48,821	Iceland	30	46,174
India	8	35,668	India	8	35,668
Ireland	22	39,059	Ireland	22	39,058
Israel	26	108,908	Israel	24	99,738
Italy	116	745,737	Italy	112	738,308

ENTRANCES

Flag	*No. of Vessels*	*Net Tonnage*
Japan	72	310,291
Liberia	146	1,255,362
Netherlands	357	1,764,058
Nicaragua	1	1,001
Norway	1059	3,216,060
Panama	364	2,214,453
Philippines	16	68,407
Portugal	33	51,975
Spain	62	211,473
Sweden	267	631,910
Switzerland	7	17,905
Turkey	1	56
Union of South Africa	6	27,833
Venezuela	48	115,046
Yugoslavia	31	114,371
Foreign	4866	21,694,804
American	3525	16,620,261
TOTAL	8391	38,315,065
Undocumented Vessels	2	6
GRAND TOTAL	8393	38,315,071

CLEARANCES

Flag	*No. of Vessels*	*Net Tonnage*
Japan	71	305,955
Liberia	149	1,249,371
Netherlands	356	1,753,060
Nicaragua	1	1,001
Norway	1063	3,220,040
Panama	364	2,209,582
Philippines	16	68,407
Portugal	32	50,800
Spain	65	217,383
Sweden	260	621,728
Switzerland	6	16,868
Turkey	1	66
Union of South Africa	7	32,469
Venezuela	50	121,225
Yugoslavia	30	160,987
Foreign	4864	21,661,193
American	3420	15,358,767
TOTAL	8284	37,019,960
American Vessels in Non-Contiguous Trade	68	292,533
Undocumented Vessels	2	458
Reported Only	37	155,529
GRAND TOTAL	8391	37,468,480